

No papers - no birth certificate? Recommendations for registering children of refugees born in Germany

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National CRC Monitoring Mechanism

No papers – no birth certificate?

Recommendations for registering children of refugees born in Germany

Position Paper

Registering a child immediately after birth is a State obligation under article 7(1) of the UN Convention on the Rights of the Child.

Registration serves to identify a newborn and is a prerequisite for enjoying other rights. In practice, registering the children of refugees born in Germany often takes several months if their parents cannot adequately prove their own identity. This paper provides recommendations on how to implement the provisions of the Convention on registering births.

To register the birth of a child, registry offices require civil status documents from the parents, which refugees may not have. It is often impossible to procure papers from their home countries from both a legal and a practical perspective. But, even without civil status documents from the parents, the right to non-discrimination in article 2 UN CRC guarantees the protection of the children of those affected from being disadvantaged because their parents' identity is unclear.¹ Following complaints from the UN Committee on the Rights of the Child², an instrument for obtaining a certificate promptly³ was created when the German Civil Status Ordinance (PStV) was revised in the form of section 35: if the registry office does not have any suitable proof of the parents' identities, an additional explanatory note can be made in the entry of the birth and a certified extract from the registry can be issued. Although no birth certificate will be issued until this record is completed with a subsequent certification, the certified extract from the registry is legally equivalent to the birth certificate by law in accordance

with section 54(2) of the German Civil Status Act (PStG).

By "immediately" in article 7(1) UN CRC, the UN Committee on the Rights of the Child means registering the birth as soon as possible.⁴ Welfare associations and advice centres have repeatedly reported on children whose birth was not registered in Germany for months. During this period, these children are practically "invisible".⁵ This problem has also been the subject of reports in the media,⁶ studies⁷ and questions to parliament at national,⁸ state⁹ and municipal¹⁰ level. Initial jurisprudence¹¹ shows that there are children who do not receive a birth certificate or a certified registry extract for a long time and instead only receive a document attesting to the deferment of the issue of the certificate in accordance with section 7(2) PStV. Only systematic collection of data can confirm whether this is a nationwide problem.¹² However, the state interior ministries responsible have not yet collected any precise figures.¹³

Problems accessing medical and state services

Newborns need the "U" medical check-ups and the vaccinations recommended by the *Robert Koch* Institute. These medical services should be provided within certain time frames – with the six U1 to U6 medical check-ups being performed in the first year of life. If this does not happen and tolerance limits¹⁴ are exceeded, the check-up is billed to the parents as an individual health service. Particularly in the case of parents who make a living for their family (primarily) from

social benefits, there is a risk that they will skip the check-ups due to a lack of funds.

The first two “U” check-ups can be settled via a parent in accordance with section 22 of the Federal Collective Agreement for physicians (Bundesmantelvertrag (Ärzte)) but subsequent services are settled via the child themselves, for which proof of the child’s identity needs to be provided. The U3 check-up should be performed at four to five weeks of age, with a tolerance of up to eight weeks. The birth therefore needs to be registered as early as possible. The federal states have different systems for ensuring the medical care of newborns in cases where the German Asylum Seekers’ Benefits Act (AsylBLG) applies. However, problems reported by professional medical associations demonstrate that these systems are deficient.¹⁵

Failing to register a birth may also pose problems with receiving child benefit. Child benefit may be received by people entitled to asylum, recognised refugees and people entitled to international protection. It will be granted if the child can be identified by a tax identification number (tax ID) in accordance with sections 62 and 63 of the German Income Tax Act (EStG). The tax ID is based on registration and civil status law;¹⁶ it is issued automatically after registration with the registration authority (section 139b(6) of the Fiscal Code of Germany (AO)). However, the registry offices only inform the registration authorities of the issue of a birth certificate in accordance with section 17(4) of the German Federal Act on Registration (BMG) in conjunction with section 57(1)(3) PStV; the deferment of the issue of the certificate in accordance with section 7 PStV is not a certificate in this sense. This means that failing to register a birth may disrupt the automatic mechanism for issuing a tax ID.

Without a tax ID, the child may be identified in “another suitable way” but this option has not yet been specified in law. The justification for the relevant draft law mentions “identification documents, foreign documents or providing a foreign personal identifier”.¹⁷ Specifying the possible alternative means of proving identity at administrative level is required to prevent cases in which child benefit is not paid, or only paid retrospectively, because the

birth has not been registered. This specification should also recognise the confirmations of birth provided by hospitals and documents attesting to the deferment of the issue of the certificate under section 7(2) PStV as adequate proof of identity.

Exhausting the legal options

A declaration in lieu of an oath and the immediate issue of a certified registry extract provide legal options to enable the registration of a birth even if the parents do not have any civil status documents to prove their own identities. However, the legal options must be exhausted. In accordance with section 9(2) PStG, proof of the fact may also be provided with declarations in lieu of an oath if it is impossible, or only possible with unreasonable effort, for those affected to provide proof with official or other documents. The German Government¹⁸ has confirmed the admissibility of a declaration in lieu of an oath in the context of the registration of births. Jurisprudence also recognises the declaration in lieu of an oath as suitable evidence under civil status law.¹⁹ However, an enquiry conducted by the Monitoring Mechanism for the UN Convention on the Rights of the Child among the state interior ministries responsible has shown that the declaration in lieu of an oath is not often utilised.

As the certified registry extract is legally equivalent to a birth certificate, the immediate issue of a certified registry extract in accordance with section 35 PStV can also enable unregistered newborns to access medical or state services; this method is an obligatory minimum in this regard. The procedure under civil status law is not terminated irreversibly with the issue of a certified registry extract because the information in the Birth Registry can be corrected in accordance with sections 47 and 48 PStG. The certified registry extract can be a temporary solution, as already expressed by the German Government.²⁰ Flexible solutions under civil status law such as these support the best interests of the child and meet the requirements of the UN Committee on the Rights of the Child.²¹

Ensuring non-discriminatory registration of births

The UN Committee on the Rights of the Child has asked Germany²² to abolish the registry offices’

obligations to notify the immigration authorities because fear of being deported should not lead to parents refraining from registering their newborns. The argument that notification obligations are an inevitable result of ensuring that administration is coherent²³ was already refuted for the same objective reasons when the notification obligations of schools were removed (see section 87(1) of the German Residence Act (AufenthG)): the parents, and not the children, are responsible for the decision to stay in the country illegally.²⁴

Non-discriminatory access to birth registration also needs to be free of charge.²⁵ While it is free to certify a birth, fees are regularly charged to issue the birth certificate or the certified extract from the registry. They vary region by region and are between EUR 5 and 15. Free certificates are generally only available for designated purposes such as for maternity assistance, parental allowance, child benefit or the state pension. The price of the certified translation of documents in foreign languages required in accordance with section 2(1) PStV may amount to hundreds or even thousands of euros, making access to birth registration difficult. Even for people who fall under AsylBLG, covering the costs is discretionary in accordance with section 6(1) AsylBLG. For non-discriminatory access to birth registration, administrative provisions or statutory regulations need to explicitly guarantee that the costs incurred for the certified translation of documents in foreign languages will be covered.

Certificates must be issued with the utmost care after hearing the parents. This also includes taking into account the possible consequences of issuing a certificate in Germany. For example, this is relevant with regard to statelessness, which can be “inherited”. If only the mother’s name is entered in the Birth Registry because the parents’ marriage certificate is missing, this causes problems because, in countries such as Syria, mothers cannot pass on their nationality.²⁶ Entering the mother alone may also mean that the child will be deemed a child born out of wedlock in their home country, which in turn may lead to legal or inheritance-related disadvantages as well as social stigmatisation. Although these forms of discrimination would have no effect under German jurisdiction, certificates issued in Germany could potentially be the cause.

It is also necessary to exhaust the existing legal options for this reason – a marriage does not have to be proved with a marriage certificate; there are also other documents that may be used, or a declaration in lieu of an oath, see section 9(2) PStG – so that the facts to be certified are correct and complete and related discrimination outside German jurisdiction is avoided as far as possible.

Recommendations

In order to guarantee that the duty to register births immediately under article 7(1) UN CRC is fulfilled without restriction, the Monitoring Mechanism for the UN Convention on the Rights of the Child recommends that the German Government and the state governments ensure that

- 1 every newborn receives a birth certificate or certified extract from the registry within a reasonable period of time;
- 2 access to state services and medical care is possible without restriction as soon as the document attesting to the deferment of the issue of the certificate in accordance with section 7(2) PStV has been received;
- 3 access to the registration of births is organised without discrimination, in particular by removing the obligations to notify the immigration authorities and by covering the costs of the officially certified translations required;
- 4 the issue of a certified registry extract does not lead to the certification process being terminated. The registry offices’ objective must be for every child born in Germany to receive a birth certificate;
- 5 the number of unregistered newborns in Germany is recorded, by central civil status registries at state level and an extension of the data and search fields in the civil status registries (Annex 1 PStV), for example. It is also necessary to determine how many children and young people have never received a birth certificate.

- 1 UN, Committee on the Rights of the Child (2004): General Comment No. 7, UN Doc. CRC/C/GC/7/Rev.1, para. 25.
- 2 UN, Committee on the Rights of the Child (2004): Concluding observations to Germany, UN Doc. CRC/C/15/Add.226, para. 55.
- 3 See Deutscher Bundestag, document (BR-Drs.) 713/08, p. 97.
- 4 See UN, Committee on the Rights of the Child (2015): Concluding observations to Switzerland, UN Doc. CRC/C/CHE/CO/2-4, para. 31.
- 5 Berufsverband der Kinder- und Jugendärzte e.V. (2016): Die unsichtbaren Kinder - ohne Geburtsurkunde, ohne Gesundheitsschutz [The invisible children - no birth certificate, no health protection], see <https://www.bvkJ.de/presse/pressemitteilungen/ansicht/article/die-unsichtbaren-kinder-ohne-geburtsurkunde-ohne-gesundheitsschutz> (accessed 05 December 2018); UNICEF (2007): Implementation Handbook for the Convention on the Rights of the Child: Fully Revised Third Edition, Part 1, p. 98; UN, Committee on the Rights of the Child (2015): General Comment No. 9, UN Doc. CRC/C/GC/9, para. 35.
- 6 taz (1 June 2016): Neugeborene ohne Identität [Newborns with no identity], see <http://www.taz.de/!5305237/> (accessed on 5 December 2018); Soester Anzeiger (22 November 2017): Flüchtlinge: Behörden-Marathon für eine Geburtsurkunde [Refugees: authority marathon for a birth certificate], see <https://www.soester-anzeiger.de/lokales/soest/fluechtlinge-soester-behoerden-marathon-eine-geburtsurkunde-9382273.html> (accessed 05 December 2018).
- 7 Stiftung Mercator (2017): Städte und Gemeinden in der Flüchtlingspolitik [Cities and communities in refugee policy], p. 33.
- 8 Deutscher Bundestag, document (BT-Drs.) 18/9163.
- 9 Landtag Mecklenburg-Vorpommern, document 7/439; Landtag Brandenburg, document 6/5226.
- 10 Stadtrat Düsseldorf (2016): Proposal 50/56/2016; Magistrat Frankfurt am Main (2016): Question of 10 June 2016, question 66.
- 11 See Sozialgericht München (2018): Judgment of 4 May 2018, S 46 EG 130/17 – juris.
- 12 As a guide, refer to a corresponding data collection in Switzerland, see Swiss Confederation (2009): Report of the Federal Council of 6 March 2009 in fulfilment of postulate 06.3861 Vermot-Mangold.
- 13 UNICEF's estimate that 100% of children born in Germany are registered is based exclusively on the national regulatory framework, see <https://data.unicef.org/topic/child-protection/birth-registration/> (accessed 05 December 2018).
- 14 See section 2 of the Richtlinie des Gemeinsamen Bundesausschusses über die Früherkennung von Krankheiten bei Kindern [Directive of the Federal Joint Committee on the early detection of diseases in children] in the version dated 18 June 2015, last updated on 19 October 2017.
- 15 See end para. 5.
- 16 Deutscher Bundestag, document (BT-Drs.) 18/2581, p. 20.
- 17 Ibid.
- 18 Deutscher Bundestag, document (BT-Drs.) 18/9163, p. 2; Federal Ministry of the Interior (2014): Rundschreiben vom 28.02.2014 zum Personenstandswesen in Afghanistan [Circular of 28 February 2014 on civil status in Afghanistan] (V II 1 - 133 400 AFG/1).
- 19 Bayerisches Oberstes Landesgericht (1999): Decision of 21 December 1999, 1 Z BR 154/98, para. 28 – juris.
- 20 See Deutscher Bundestag, document (BT-Drs.) 18/1030, p. 8.
- 21 UN, Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/Committee on the Rights of the Child (2017): Joint General Comment No. 4, UN Doc. CMW/C/GC/4-CRC/C/GC/23, para. 22. However, flexible solutions must not lead to the state abandoning its efforts to issue the child a birth certificate. As the child gets older, it is still necessary for them to be able to conclusively prove their own identity and birth certificates play an important role, for example if they get married or become naturalised. Therefore, issuing a certified registry extract must not mean that they have to forfeit their right to a birth certificate.
- 22 UN, Committee on the Rights of the Child (2014): Concluding observations to Germany, UN Doc. CRC/C/DEU/CO/3-4, para. 29.
- 23 Deutscher Bundestag, document (BT-Drs.) 18/1030, p. 8.
- 24 Deutscher Bundestag, document (BT-Drs.) 17/6497, p. 8.
- 25 UN, Committee on the Rights of the Child (2004): General Comment No. 7, UN Doc. CRC/C/GC/7/Rev.1, para. 25.
- 26 Institute on Statelessness and Inclusion, European Network on Statelessness (2017): Joint Submission to the Human Rights Council at the 30th Session of the Universal Periodic Review (Germany), para. 29.

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